



STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



EDMUND G. BROWN JR.
GOVERNOR

February 4, 2011

CCL INFORMATION RELEASE NO. 2011-01

REASON FOR THIS TRANSMITTAL

- ☒ State Law Change
- ☒ Federal Law or Regulation Change
- ☐ Court Order
- ☒ Initiated by CCLD

TO: CHILDREN'S RESIDENTIAL PROGRAM STAFF
CONTRACTED COUNTY FOSTER FAMILY HOME LICENSING
PROGRAM

**SUBJECT: FOSTER FAMILY HOMES REGULATIONS QUESTIONS AND
ANSWERS**

The Community Care Licensing Division has compiled the following Foster Family Homes (FFH) Regulations Questions and Answers (Q & A) to assist state and county licensing staff and caregivers as they implement the updated FFH regulations, which became effective April 3, 2010. The attached Q & A is being released as a follow up to the statewide FFH regulations implementation training provided to state and county staff.

If you have any questions, please contact Fernando Sandoval, Manager of the Children's Residential Policy Unit, at (916) 654-2105.

Sincerely,

Original signed by Jeffrey Hiratsuka

JEFFREY HIRATSUKA
Deputy Director
Community Care Licensing Division

Attachment

FOSTER FAMILY HOMES REGULATIONS QUESTIONS AND ANSWERS

1. How can a caregiver apply “age and developmentally appropriate” access to an activity for a “child” who has particularly challenging behaviors or conditions?

“Age-appropriate” is defined in Section 89201, subsection (a)(2) as “...activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity. Age appropriateness is based on the development of cognitive, emotional, physical, and behavioral capacity that is typical for an age or age group.”

When deciding whether it is age and developmentally appropriate for a “child” to take part in a certain activity, a caregiver must apply “age appropriate” as it is defined and also apply the Reasonable and Prudent Parent Standard (RPPS) as defined in Section 89201, subsection (p)(8) and as specified in Section 89377 Reasonable and Prudent Parent Standard. Some factors a caregiver must consider in his or her decision include information known to the caregiver about the “child” such as age, maturity, and developmental level of the “child”; the written plan identifying the specific needs and services of the “child”; conversations with the social worker or probation officer for the “child”; and the inherent risk of harm of the activity.

A “child” may have challenging behaviors or conditions such as frequently being physically aggressive or fighting, often not telling the truth, or being prone to running away.

2. The definition for “Unlicensed Community Care Facility” includes a “licensed home that moves to a new location.” Does this contradict the new policy of being able to move to a new location without having to re-license the new address?

“Unlicensed Community Care Facility,” as defined in Section 89201, subsection (u)(2)(A) through (C), does not preclude a FFH from arranging for transfer of license when moving to a new location. A FFH license may be transferred to a new location if:

- The caregiver provides the licensing agency with reasonable notice prior to any change in the location of their home as specified in Sections 89234, subsection (d) and 89361, subsection (d);
- There are no outstanding actions or investigations on the caregiver seeking the transfer; and
- The caregiver is in compliance with all applicable licensing laws and regulations for the FFH at the new location.

3. A newly licensed or existing FFH has six children total; however, two of those children are only in the home part-time. Can the foster parent take emergency placements when the part-time children are not in the home?

Depending on the circumstances under which the part-time children would not be in the home, the licensing agency may permit a FFH to accept emergency placements of children.

However, the FFH must not exceed the capacity determination, as specified in Section 89228 Capacity Determination, for the home at any time. Please see the attached chart regarding the capacity of Foster Family Homes.

4. A newly licensed or existing FFH has an adult daughter and her children living in the home. Do her children count toward the six child capacity, even though the foster parent is not the main care provider for them?

Yes. An adult daughter's children would count towards the capacity census of six children.

Capacity determination for a FFH takes into account all children living in the home. Section 89228, subsection (a)(1) requires that for a new FFH licensed after January 1, 2010, the number of children in the home shall not exceed six, including a "child" and biological, adoptive, and guardianship children. Subsection (a)(1)(A) requires that an existing FFH that exceeds the total of six children specified in subsection (a)(1) accept no new placements until the number of children in the home does not exceed six.

5. What will happen if an existing FFH is over capacity? For example, there are eight adoptive, biological, or guardianship children plus three foster children in the FFH.

As indicated by Section 89228, subsection (a)(1)(A), which pertains to a FFH license obtained prior to January 1, 2010, the regulations permit an existing FFH to retain all children currently living in the home. A caregiver must not accept new placements of children into the FFH beyond the census of six children specified in regulations until the number of children in the home does not exceed six, or the caregiver seeks an exception or waiver from the licensing agency to accept more children. As long as there are no health and safety concerns in regard to the FFH, the licensed capacity for the home will remain the same until one of these two events occurs.

6. Does the capacity of six children in the home affect capacity for children with special health care needs?

A specialized FFH must be licensed for no more than two foster children with or without special health care needs as specified in Section 89510.1, subsections (a)

and (b). However, such a home may be licensed for up to three foster children with or without special health care needs if the home can meet the needs of a third “child,” and placement of the third “child” in the home will not jeopardize the health and safety of other foster children placed in the home as specified in Section 89510.1, subsection (b)(1)(A) through (C). The capacity determination for a specialized FFH is subject to the consideration of the adoptive, biological, and guardianship children already living in the home. Please see the attached chart regarding the capacity of Specialized Foster Family Homes.

7. Is the licensing agency going to define the assessment of whether a newly licensed or existing FFH is allowed a capacity of more than six children as an “exception” or a “waiver”?

As indicated by Section 89228, subsection (a)(2), if it is determined that a FFH can meet the needs of all children in the home, the licensing agency may grant an exception or waiver for the home to provide care to more than six children. A newly licensed FFH may request an exception or waiver from the licensing agency. An existing FFH may request a waiver or an exception any time after being licensed.

- “Exception” means a “child”-specific written authorization issued by the licensing agency as an alternate way to meet the intent of a specific regulation based on documentation of the unique needs or circumstances of a specific “child” (Section 89201, subsection (e)(3). If a caregiver wishes to provide care for an additional “child” above the licensed capacity, the licensing agency may grant an exception. The exception would be time limited and only last as long as the additional “child” is in the FFH and the caregiver remains in compliance with the exception.

Examples: The caregiver wishes to accept a sibling or siblings of a child already in placement or has special qualifications to meet the needs of the “child.”

- “Waiver” means a home-wide written authorization issued by the licensing agency as an alternate way to meet the intent of a specific regulation based on a demonstration of the unique needs or circumstances of the home (Section 89201, subsection (w)(1). If a caregiver wishes to provide care for additional children above the licensed capacity, the licensing agency may grant a waiver. The waiver would be permanent and last as long as the FFH accepts additional children and the caregiver remains in compliance with the waiver.

Examples: The FFH is particularly large to accommodate additional children, the caregiver has demonstrated experience in caring for a large family, or the caregiver has obtained household help to assist in providing care and supervision.

8. The licensing agency may authorize a home to care for up to eight children to accommodate a sibling group. Since eight children exceeds the maximum of six children in the home permitted by Section 89228, subsection (a)(1), does a FFH need to obtain an exception or waiver from the licensing agency to comply with this regulation?

Section 89228, subsection (a)(3) extends the capacity census of six children in the home to eight children to accommodate sibling groups. An exception or waiver from the licensing agency is not required as long as the home meets all other applicable licensing standards specified in Health and Safety Code section 1505.2 and Section 89420, subsection (b). Please see the attached chart regarding the capacity of Foster Family Homes specializing in sibling groups.

9. The regulations state that a new application is required for a change that affects the capacity of the home. Would this be required in the case of an adoption or guardianship?

Section 89234, subsection (b)(2) requires that a new Foster Family Home Application (LIC 283) be filed when any change affects the capacity of the FFH.

10. Are existing homes that are currently dually licensed as a FFH and another type of facility affected by the new FFH regulations?

The new FFH regulations continue to permit existing FFH to be dually licensed as long as they remain in continuous compliance with licensing requirements for both types of facilities.

As required by Section 89361, subsection (a)(8), the caregiver must now report to the licensing agency when the home also operates as a family child care home (FCCH). All FFH that are dually licensed as a FCCH must comply with this new requirement.

Specialized FFH continue to be prohibited from being dually licensed as specified in Section 89510.2 Prohibition of Dual Licensure for Specialized Foster Family Homes.

11. How is the capacity of a Foster Family Home (FFH) determined when the FFH is dually licensed as a FFH and FCCH?

The capacity determination for the FFH is affected by the licensing agency consideration of the factors specified in Section 89228, subsection (d)(1) through (5). The licensing agency may grant a lower licensed capacity to the FFH as specified in Section 89228, subsection (c) to accommodate a FCCH operation. If a caregiver disagrees with the licensing agency's capacity decision, he or she may appeal the decision as specified in Section 89228, subsection (d).

12. What is a caregiver's responsibility for providing transportation when other arrangements are specified in the documents in regard to a "child"?

It is the responsibility of a caregiver to be aware of what his or her obligations may be in regard to providing transportation for a "child." Section 89374, subsection (c) requires that, unless other arrangements are specified in the written plan identifying the specific needs and services of the "child" or the written placement agreement, the caregiver is required to ensure that the "child" is provided with transportation.

13. Is therapy considered a medical appointment for a "child" to which a caregiver must provide transportation?

Yes. Unless other arrangements are specified in the written plan identifying the specific needs and services of a "child" or included in the written placement agreement for the "child", Section 89374, subsection (c)(1) requires a caregiver to ensure that a "child" is provided with transportation to medical appointments. Medical appointments include therapy, which may include, but is not limited to: occupational therapy, physical therapy, or psychotherapy with a mental health professional.

14. At what age can a caregiver allow a "child" to eat separately from the family? Should a caregiver document if a "child" prefers to eat in a separate location or at a different time than the rest of the family?

Section 89376, subsection (b) requires that a caregiver invite a "child" to participate in all household meals to normalize life in the home and treat the "child" as a member of the family.

If a "child" frequently prefers to eat in a separate location or at a different time than the rest of the family, the caregiver may document that the "child" is invited to participate in all household meals. Although caregiver documentation is not required, the caregiver may choose to document their efforts to ensure that all household meals include the "child."

15. What may a caregiver expect from the licensing agency when he or she has applied the RPPS and something goes wrong? For example, a "child" suffers an injury doing an activity.

A caregiver must apply the RPPS as specified in Section 89377 Reasonable and Prudent Parent Standard. When necessary, a caregiver must be prepared to demonstrate his or her determinations in applying the RPPS to the licensing agency. If the RPPS is not applied in compliance with Section 89377 Reasonable and Prudent Parent Standard, the licensing agency may issue a citation.

16. The regulations specify that a caregiver may use an occasional short-term babysitter if the caregiver anticipates being absent from the home for no more than twenty-four hours at a time and that a “child” may act as an occasional short-term babysitter. Given the timeframe of up to twenty-four hours, do the regulations permit a “child” to act as an occasional short-term babysitter overnight?

Section 89378, subsection (a)(1)(A)1. permits a caregiver to have an occasional short-term babysitter when absent from the home for no more than 24 hours. The caregiver is required to apply the RPPS as specified in Section 89377 Reasonable and Prudent Parent Standard and Section 89378, subsection (a)(1)(A)3.a. to determine whether it is appropriate for the “child” to act as an occasional short-term babysitter for up to twenty-four hours that may include overnight.

17. Who determines the maturity and ability of a person under eighteen years of age to act as an occasional short-term babysitter?

Section 89378, subsection (a)(1)(A)3. permits an occasional short-term babysitter to be under age eighteen, but requires the maturity, experience, and ability necessary to provide adequate care and supervision to a “child.” A caregiver must determine the maturity and ability of a person under age eighteen using the RPPS as specified in Section 89377 Reasonable and Prudent Parent Standard. In applying the RPPS, the caregiver may also consult with the social worker for the “child.” Although caregiver documentation of a decision to use the selected occasional short-term babysitter is not required, the caregiver may choose to document the application of RPPS in selecting the occasional short-term babysitter. If the RPPS is not applied as specified in the regulations and something goes wrong, the licensing agency may issue a citation.

**18. Can foster children babysit biological children?
Can biological children babysit foster children?
Can foster children babysit foster children?**

Yes. When arranging for a “child” or biological child to act as an occasional short-term babysitter, a caregiver must apply RPPS as specified in Section 89377 Reasonable and Prudent Parent Standard. Under no circumstances shall a “child” be required to babysit as specified in Section 89378, subsection (a)(1)(A)3.a.

19. Is an alternative caregiver the only one allowed to watch a “child” for more than seventy-two hours with placement worker approval?

Yes. A caregiver is required to obtain prior approval from the social worker or probation officer for a “child” when planning to have an alternative caregiver for more than seventy-two hours as specified in Section 89378, subsection (a)(1)(B)6.

20. The alternative caregiver may only provide care in the FFH. What can a caregiver do when he or she needs to be gone for a week and can't find an alternative caregiver who can provide care in the FFH for the full week?

Section 89378, subsection (a)(1)(B)3. requires that the care and supervision provided by an alternative caregiver during the caregiver's absence be provided in the caregiver's home. The intent of this regulation is to require that a caregiver provide stability in a familiar environment for a "child" when he or she is away from the FFH for a longer period of time. Depending on the nature of a caregiver's absence from the FFH, a caregiver may consult with the social worker or probation officer to determine appropriate options for care to be provided.

21. The regulations permit a caregiver to leave a "child" alone without adult supervision occasionally, but not overnight. How is this normalizing for a "child" who is near emancipation age or when other children may be left alone on a routine basis?

As permitted by Section 89378, subsection (a)(1)(D)1., a caregiver may leave a "child" alone without adult supervision, but shall not leave a "child" unsupervised overnight. However, a "child" must not be left alone on a regular and routine basis. This is particularly important to safeguard the health and safety of a "child" who may have been subject to abuse or neglect and may be particularly vulnerable. The caregiver is required to apply the RPPS to determine the appropriateness of leaving a "child" alone without adult supervision and may find other appropriate means of preparing an older "child" for self-care.

22. What is a caregiver's responsibility in regard to a "child" getting a driver's license?

Obtaining a driver's license is a normalizing experience for a "child" that also prepares the "child" for adulthood. A caregiver is not required to, but may decide to, help a "child" obtain a driver's license. If a caregiver decides to help a "child" obtain a driver's license, the caregiver must apply the RPPS as specified in Sections 89377 Reasonable and Prudent Parent Standard and 89379, subsection (b) to determine if obtaining a driver's license is appropriate for the "child." In applying the RPPS, the caregiver may also consult with the social worker for the "child."

23. Is a caregiver allowed to use the RPPS when allowing a "child" to have confidential use of the Internet, especially social networking sites?

Yes. As required by Section 89379, subsection (b), a caregiver shall promote participation by a "child" in extracurricular, enrichment, and social activities. Such activities would include Internet usage. The RPPS, as specified in Sections 89377 Reasonable and Prudent Parent Standard and 89379, subsection (b), must be applied to maintaining a safe computer and managing access to the Internet by a "child."

Reasonable restrictions may be imposed by the caregiver on calls and correspondence as specified in Section 89372, subsection (a)(5)(A). Also, other reasonable restrictions may be imposed, including the caregiver restricting Internet usage when appropriate as specified in Section 89372, subsection (a)(5)(B)5.

24. Bunk beds must have a rail on both sides. Does this regulation “grandfather” in current homes where the railing is only on one side? How much time will a caregiver be given to purchase and install railings or purchase new bunk beds that meet the two rail requirement?

There are no grandfathering provisions in these regulations. Section 89387, subsection (a)(8)(A) requires that bunk beds have railings on both sides of the upper tier to prevent a “child” from falling.

However, a caregiver may contact their licensing office to request a Documented Alternative Plan (DAP). For example, there may be a situation where a bunk bed is against a wall on one side and has a rail on the other side, which may be adequate for ensuring the safety of a “child.”

25. What standard measurement should be used to determine if the slats on a crib are safe?

Section 89387, subsection (a)(9)(B) requires that crib slats not pose the danger of an infant being trapped. The caregiver should evaluate the age and size of the “child” using the crib, along with the distance between the slats, to determine whether that distance creates an entrapment hazard.

The caregiver may wish to consider the recommendation of the Consumer Product Safety Commission (CPSC) in evaluating the risk that a “child” could become trapped in the crib slats. The CPSC recommends there be no more than 2 3/8 inches between crib slats so the body of a “child” cannot fit through the slats.

26. May CPR and first aid courses be taken online?

Section 89405, subsections (b)(1) and (2) require a caregiver to complete current training in CPR and first aid and do not prohibit online training. A caregiver must obtain current training in first aid and CPR from agencies including, but not limited to, the American Red Cross, the American Heart Association, a training program approved by the State Emergency Medical Services Authority, or a course offered by an accredited college or university. Although some of these entities now offer online first aid and CPR training, CCLD recommends that caregivers seek training that includes a hands-on component.

0

27. Does an existing FFH need to obtain a fire clearance when it has more than six children in the home, including adoptive, biological, foster, and guardianship children?

Section 89420, subsection (b) requires a caregiver to obtain an appropriate fire clearance when he or she is licensed for a capacity of more than six foster children who are ambulatory or requests an increase in licensed capacity to more than six foster children who are ambulatory. This requirement applies to existing FFH and FFH licensed after January 1, 2010, regardless of the number of adoptive, biological, or guardianship children also in the home.

As required by Section 89420, subsection (a), a caregiver is also required to obtain a fire clearance before accepting a “child” who is non-ambulatory, or when deciding to continue providing services to a “child” determined to be non-ambulatory after placement.

28. A medical assessment for a “child” shall include the results of an examination for communicable Tuberculosis (TB) and other contagious or infectious diseases. Does this mean that a “child” should be getting a TB test done during his or her Child Health and Disability Prevention (CHDP) medical exam?

Section 89469, subsections (a)(1) and (2) require that a medical assessment for a “child” not be more than a year old and include the results of an exam for communicable tuberculosis (TB) and other contagious or infectious diseases. For more information, please see the June 2008 *Children’s Residential Care Update* on the CCLD website at <http://cclld.ca.gov/res/pdf/CR0608.pdf>.

29. Can occasional short-term babysitters, alternative caregivers, and respite care providers administer emergency injections and prescribed injections?

Yes. Section 89475.1, subsection (a) requires that a caregiver ensure that persons who provide emergency medical assistance and injections to a “child” are trained as specified in Health and Safety Code section 1507.25. A caregiver must apply the RPPS as specified in Section 89377 Reasonable and Prudent Parent Standard, to determine if it is appropriate for an occasional short-term babysitter or alternative caregiver to give emergency injections and prescribed injections to a “child.” A respite care provider must be a licensed, approved, or certified caregiver as specified in Section 89378, subsection (a)(1)(C)(2).

30. Can a Family Nurse Practitioner (FNP), Registered Nurse (RN), or Physician’s Assistant (PA) give permission for a “child” to self-administer medication or injections?

No. Sections 89475, subsection (c)(1)(A) and 89475.1, subsection (f) permit a “child” to self-administer medication or injections if the physician for the “child” gives permission.

31. What can a caregiver who is uncomfortable with showing a “child” how to self administer his or her own medication or injections do to ensure that the “child” knows how to do this self-administration?

As specified in Section 89475.1(f)(1), a caregiver shall ensure that a “child” knows how to self-administer his or her medication and injections when the self-administration is permitted by the physician for the “child.” If a caregiver is uncomfortable with showing a “child” how to self-administer the medication or injections, the caregiver may seek assistance from the licensed health care professional providing care to the “child.” The caregiver may also arrange for a licensed health care professional to administer the medication or injections to the “child.”

Sections 89228 and 89510.1 Capacity Determination for Foster Family Homes (FFH) and Specialized FFH	
New FFH	
Adoptive, Biological, and Guardianship Children	Licensed Capacity*
Zero	Up to six
One	Up to five
Two	Up to four
Three	Up to three
Four	Up to two
Five	Up to one
Existing FFH	
Adoptive, Biological, Foster, and Guardianship Children	Licensed Capacity*
More than six	No more foster children than currently on the license until the existing home goes down to the required capacity census of six children
FFH Specializing in Sibling Groups	
Adoptive, Biological, and Guardianship Children	Licensed Capacity*
Zero	Up to eight
One	Up to seven
Two	Up to six
Three	Up to five
Four	Up to four
Five	Up to three
Six	Up to two
Seven	Up to one
Specialized FFH	
Adoptive, Biological, and Guardianship Children	Licensed Capacity**
Zero	Up to three
One	Up to two
Two	Up to one
<p><i>*A FFH may apply for an exception or waiver from the licensing agency to increase the capacity. The FFH must be reviewed for capacity determination as specified in Section 89228(b)(1) through (5) and there must be no health and safety concerns about the home.</i></p> <p><i>**For a licensed capacity of three foster children, the requirements of Section 89510.1(b)(1)(A) through (C) must be met.</i></p>	